U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9317321

Date: OCT. 16, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a physical therapist, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

> who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
>
> (B) Waiver of job offer –
>
> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding her claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicated that "[s]he intends to open a mobile physical therapy business in Florida."[4] She stated that she plans to "engage in the business of mobile physical therapy within the rehabilitation industry. [redacted] Mobile Physical Therapy will perform all types of prescribed physical therapy in a patient's home. In addition, it will also offer fall prevention therapy to people over 55 that struggle with balance." The Petitioner explained that the cost of falls among older adults "is a national concern" and that her proposed work to provide rehabilitation and preventative services stands to reduce Medicare and Medicaid costs related to falls. She also asserted that her undertaking "will create 5 direct jobs" in the United States.

The Petitioner presented the 2018 business plan for [redacted] Mobile Physical Therapy which states that her company will provide "mobile physical therapy to residents in [redacted] FL." This business plan includes market analyses, information about the company and its services, financial forecasts and projections, an explanation about startup funding, and a description of company management and personnel. Regarding future staffing, the Petitioner's business plan anticipates that [redacted] Mobile Physical Therapy will employee five personnel in each of its first three years. In addition, her plan offers sales projections of $764,282 in year one, $1,892,071 in year two, and $2,081,278 in year three. The Petitioner, however, does not adequately explain how these sales forecasts were calculated.

With respect to startup funding, the business plan states on page 13 that "[the Petitioner] will be the sole investor for [redacted] Mobile Physical Therapy" and that "Total Funding Required" is $110,000.[5] In response to the Director's RFE, the Petitioner provided a March 2018 letter from [redacted] stating its "intention to invest $110,000 on [redacted] Physical Therapy in exchange for a minority capital interest."[6]

---

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[4] The Petitioner noted that she is "in the process of obtaining" her physical therapy license in the United States and provided an "Authorization to Test" notice from the Federation of State Boards of Physical Therapy. This notice informed the Petitioner that she was required to schedule and take her examination on July 25, 2019.

[5] The Director issued a request for evidence (RFE) informing the Petitioner that she "did not submit evidence to establish that [she] has the required start-up costs for the business."

[6] The Director's decision noted that the Petitioner's spouse is the manager of [redacted] and that the record did not include evidence demonstrating his "company has $110,000 in funds available to invest in [the Petitioner's] mobile physical therapy business." In her appeal brief, the Petitioner argues that "if the adjudicating officer was not sure about the company having the funds available, the Service should have issued another request for evidence and the Petitioner could have provided the evidence of the ability to invest the amount of $110,000." The Director may, as a matter of

The record includes information about the increasing number of people age 65 and over in the United States, the elderly population in Florida and [redacted] and its projected growth, costs for falls billed to Medicare, the aging population of baby boomers as a driver of healthcare occupation growth, the projected increase in U.S. home health employment, and the difficulty of filling physical therapist positions. The Petitioner also provided information about falls as a leading cause of fatal and nonfatal injuries among those over age 65, new job growth in healthcare support occupations and healthcare practitioners, U.S. healthcare costs attributable to falls suffered by the elderly population, and increased demand for physical therapy attributable to aging baby boomers.[7] The record therefore supports the Director's determination that the Petitioner's proposed work to operate a physical therapy business has substantial merit.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

The Petitioner argues on appeal that her "field has a problem of shortage of professionals, as well as an excess expenditure with people with balance problems." She contends that because she "proposes to insert more than one physical therapist in the marketplace, plus create job positions helping the economy, and address a problem which would save the government funds in healthcare," her proposed endeavor offers broader implications beyond her company's employees and clientele. The Petitioner further states that she "is availing herself to pursue her PT license in the U.S., as well as creating a business to employ other physical therapists," and that her undertaking stands to "fill the gap of 33,000 unfilled jobs, one physical therapist at a time." She also maintains that her proposed work involving "rehabilitation and preventative services . . . will contribute to reduc[ing] Medicare and Medicaid['s] astonishing costs related to falls." Additionally, the Petitioner asserts that her proposed endeavor "will create 5 direct jobs" that this "initial change in economic activity results in other rounds of spending thus creating additional jobs in the region."

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of her work. Although the Petitioner's statements reflect her intention to create and operate a mobile physical therapy business, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the

---

discretion, request additional evidence if the record does not establish eligibility, but he is not required to do so. *See* 8 C.F.R. § 103.2(b)(8). Regardless, the Petitioner has had an opportunity to address the Director's finding on appeal, and we review the record on a *de novo* basis. The Petitioner's appellate submission, however, does not include evidence to corroborate the Petitioner's claim that [redacted] has $110,000 in funds available to invest in her business.

[7] For example, the Petitioner offered an estimate from the American Physical Therapy Association that "in 2016, demand for full-time physical therapists will exceed 229,000, with a pool of candidates of around 196,000 - creating a gap of 33,000 unfilled jobs."

petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her business and its clientele to impact her field, the healthcare industry, or the U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, she has not shown that her company's future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the sales forecast for [redacted] Mobile Physical Therapy indicates that the company has growth potential, it does not demonstrate that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that her company will hire U.S. employees, she has not offered sufficient evidence that the area where [redacted] Mobile Physical Therapy operates is economically depressed, that she would employ a significant population of workers in that area, or that her endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. Nor has the Petitioner demonstrated that the reduced healthcare costs attributable to her company's future rehabilitation and preventative services stand to substantially affect Medicare and Medicaid savings in Florida or nationally.

In addition, while the Petitioner offered information indicating that the United States faces a shortage of physical therapists, this reported shortage does not render the work of an individual physical therapy business operator nationally important under the *Dhanasar* framework. With respect to the Petitioner's intention to work as a licensed physical therapist, the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Accordingly, a shortage alone does not demonstrate that waiving the requirement of a labor certification would benefit the United States. Here, the Petitioner has not shown that her proposed work stands to have wider implications in the field of physical therapy or the U.S. healthcare industry. Her proposed work therefore does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.